

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FIRST REGION**

In the Matter of

NEW HAMPSHIRE PUBLIC  
DEFENDER

Employer

and

PAMELA J. ACCORNERO,  
AN INDIVIDUAL

Petitioner

and

STATE EMPLOYEES ASSOCIATION  
OF NH, a/w SERVICE EMPLOYEES  
INTERNATIONAL UNION,  
LOCAL 1984

Union

Case 1-RD-2102

**DECISION AND ORDER**<sup>1</sup>

The single issue raised by these proceedings is the legal question of whether a collective-bargaining agreement reached between the Employer and the Union bars the processing of the present decertification petition where, before the agreement was fully executed, some of the signatories to the written agreement knew a decertification petition

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<sup>1</sup> Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

Upon the entire record in this proceeding, I find that: 1) the hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; 2) the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this matter; 3) the labor organization involved claims to represent certain employees of the Employer; and 4) a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

had been placed in the mail to be filed the next day with the Board's Region 1 office. The Union maintains that the petition is untimely under the Board's contract-bar policy, while the Petitioner urges the Board to process the petition. As set forth in detail below, I find that where, as here, a collective-bargaining agreement between the employer and union involved is executed on the day before a decertification petition is filed, under long-standing Board law, that agreement bars the processing of the decertification petition, and I shall, therefore, dismiss the petition as untimely.

## **I. FACTS**

### **Background:**

The facts in this case, as set forth below, are not in dispute. The Employer, New Hampshire Public Defender, is a private, non-profit organization that performs services for the State of New Hampshire pursuant to public funding. The Union, State Employees Association of New Hampshire, a/w Service Employees International Union, Local 1984, represents a bargaining unit of about 29 investigators who work in 10 different locations of the Employer throughout the State of New Hampshire. The Employer and Union have been parties to a series of successive collective-bargaining agreements covering the substantive terms and conditions of employment of the investigators. The most recent agreement, which is the one at issue here, was fully executed on July 31, 2007,<sup>2</sup> and is effective by its terms from the date of execution through June 30, 2009 (hereinafter the 2007-2009 agreement).

The last agreement between the parties that was drafted in the form of a full agreement (as opposed to an amendment to a full agreement) was executed on March 31, 2004, to be effective until midnight on June 30, 2005. By mutual written agreement, that contract was amended on March 15, 2005, to include wage increases retroactive to July 1, 2004. The agreement as amended was then extended twice. The first extension was effective to June 30, 2006, and the second extension was effective until midnight on July 31, 2007. Although the record does not establish the exact dates on which the two extensions were executed, the second extension (which was effective until July 31, 2007) was entered into by the parties in the fall of 2006. The record indicates that this second extension was entered into based on budget considerations, as the Employer's funding is directly tied to a legislative calendar for which July is a month of importance. There is no dispute between the parties that the prior collective-bargaining agreement remained in effect through midnight on July 31.<sup>3</sup>

No representation petition was filed during the open period for such filings, which runs from 90-60 days before the July 31 expiration date of the second extension.

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<sup>2</sup> All dates are in 2007, unless otherwise noted.

<sup>3</sup> No party disputes that this contract extension was duly executed. In any event, inasmuch as there is no issue concerning the status of this second extension as a bar to the filing of the petition here, I find it is immaterial that the record contains only an unsigned copy of the second extension.

The Execution of the 2007-2009 Collective-Bargaining Agreement  
and the Filing of the Decertification Petition:

The record indicates that in late June, the Employer learned of the New Hampshire legislature's actions regarding its budget and, with that knowledge, on July 3, the parties began meeting to negotiate a successor collective-bargaining agreement. On July 24, after several meetings, the parties reached a tentative agreement on an overall collective-bargaining agreement,<sup>4</sup> subject to the approval of the Employer's board of directors and ratification by the Union's membership.<sup>5</sup> By the afternoon of July 25, the Union, by Cheryl Stafford-Rogers, informed the Employer that its membership had ratified the contract. Mary Hawkes, the Employer's investigations director, indicated that she would try to get the contract executed by July 31, the expiration date of the second extension, despite potential difficulty in tracking down certain members of the board of directors to approve it due to vacation schedules.

The Petitioner, Pamela Accornero, an investigator in the bargaining unit, apparently intended to file a decertification petition if no contract was in effect as of August 1, and she made this known to both Union and Employer representatives prior to July 31. Had the second extension expired on July 31 without a new contract having been signed, all the parties knew that there would be no contract bar as of August 1. During July, there were a series of e-mails among employees regarding pro-union and pro-decertification positions, and Accornero engaged in this discourse.<sup>6</sup>

On the morning of July 31, Accornero learned that the new contract was not yet signed, so she proceeded to collect signatures from coworkers who were in favor of decertification. In the afternoon, Accornero spoke with Hawkes by phone and told Hawkes that she had all the signatures she needed to file a petition and that she wanted to send it that day because she wanted it to be in the hands of the National Labor Relations Board the following morning, August 1. On July 31, Accornero went to the post office near her office in Laconia, New Hampshire, and mailed the petition and showing of interest to the Region 1 office by overnight express mail. The post office receipt indicates the time of mailing as 3:16 p.m. on July 31. After mailing the petition,

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<sup>4</sup> Although, after July 24, there was some discussion between Employer representative Mary Hawkes and Union representative Cheryl Stafford-Rogers about the possibility of modifying the distribution structure for the wage rate increases contained in the 2007-2009 agreement, no modification was adopted. On July 30, the parties confirmed their intention to execute the contract as agreed to.

<sup>5</sup> Inasmuch as the 2007-2009 agreement does not expressly require ratification as a condition precedent, ratification was not required in order for the contract to serve as a bar. See *Paperworkers Local 5 (International Paper)*, 294 NLRB 1168, fn. 1 (1989), citing *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958).

<sup>6</sup> From July 23 to August 6, Accornero was out of the office on vacation. She learned by e-mail on July 25 that the parties had reached a tentative agreement.

Accornero called Hawkes and told her the petition had been sent. At about 6:00 p.m. on July 31, Accornero learned from Hawkes by phone that the parties had fully executed the 2007-2009 collective-bargaining agreement. On August 1, the petition arrived at the Regional Office, received a date stamp, and was filed.

## II. ANALYSIS AND CONCLUSION

It is well settled that a collective-bargaining agreement will serve as a bar to an election petition if that agreement satisfies certain formal and substantive requirements. The agreement must contain substantial terms and conditions of employment sufficient to stabilize the parties' bargaining relationship, and the contract must be signed by the parties prior to the filing of the petition. *Seton Medical Center*;<sup>7</sup> *Appalachian Shale Products Co.*<sup>8</sup> The burden of establishing that a contract is a bar is on the party asserting the doctrine. *Roosevelt Memorial Park*.<sup>9</sup>

As the party claiming that the contract is a bar to the petition here, the burden is on the Union. I find that the Union has met its burden for the following reasons. The 2007-2009 agreement signed by the parties contains substantial terms and conditions of employment, including such significant terms as wage rates, hours of work, and a grievance procedure. The law in this area is clear that when a contract, signed by all the parties, precedes the filing of a petition, the contract bars the processing of that petition. *Seton Medical Center*;<sup>10</sup> *USM Corp.*<sup>11</sup> I find that the 2007-2009 collective-bargaining agreement was signed and fully executed by both the Union and the Employer on July 31, 2007. I further find that the petition at issue in this case was filed on August 1, 2007. Inasmuch as the contract was signed before the petition was filed, the contract, which contains substantial terms and conditions of employment and is otherwise valid, bars the processing of the petition under the Board's contract bar policy. *Appalachian Shale Products*.<sup>12</sup>

The fact that the petition was placed in the mail on the same date the contract was signed does not affect its status as a bar to the petition, which was not filed until the next day. In *Deluxe Metals*,<sup>13</sup> the Board held that when a petition is filed on the same day on

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<sup>7</sup> 317 NLRB 87 (1995).

<sup>8</sup> 121 NLRB 1160 (1958).

<sup>9</sup> 187 NLRB 517 (1970).

<sup>10</sup> *Supra*.

<sup>11</sup> 256 NLRB 996, 999 (1981).

<sup>12</sup> *Supra*.

<sup>13</sup> 121 NLRB 995, 999 (1958).

which a contract is signed, it is not timely filed unless the parties knew the petition was already filed before they signed the contract. The Board has held, however, that notice to the parties of the mailing of a representation petition, even though it antedates both the signing of the contract and the actual filing of the petition, does not meet the exception articulated in *Deluxe Metals*, and, therefore, cannot defeat the contract bar rule. *Santa Fe Trail Transportation Co.*<sup>14</sup> Here, as in *Appalachian Shale Products*,<sup>15</sup> the contract's execution antedated the actual filing of the petition. Under these circumstances, as in *Santa Fe Trail Transportation*, Accornero's notice to the Employer, even though it antedated the parties' execution of the contract, did not meet the requirements of the *Deluxe* rule.

In balancing the Act's twin goals of protecting employees' right of self-determination and preserving industrial stability by supporting the collective-bargaining process, the Board must necessarily draw lines. *Appalachian Shale Products*,<sup>16</sup> and *Deluxe Metal Furniture Co.*<sup>17</sup> In the case of the contract bar rule, the line that the Board has chosen to draw is clear: A signed contract will bar a petition unless the petition is filed before the contract is signed. *Id.* Here, the petition was not filed before the contract was signed. The Petitioner could have, but failed to, file a petition during the 90-60 day window period before the second extension's July 31 expiration date. Accordingly, I find that the 2007-2009 agreement is a bar to the present petition, and, therefore, the petition must be dismissed.

### **ORDER**

**IT IS HEREBY ORDERED** that the petition is dismissed.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review this Decision, clarification of Bargaining Unit, and Order may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099

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<sup>14</sup> 139 NLRB 1513, 1514 fn. 3 (1962). In *Santa Fe Trail Transportation*, on February 15, 1962, the petitioning union notified the employer by telegram that it had filed a petition for representation with the Board, and, on the same day, mailed its petition to the Board's Regional Office, where it was received some time on the following day, February 16. On February 16, the employer and the incumbent union executed a contract. The Board held that the petition, received at the Regional Office on the day after notification to the employer, was untimely filed under *Deluxe Metal*. In *Santa Fe Trail Transportation*, however, the contract bar defense was found vulnerable on other grounds.

<sup>15</sup> *Supra.*

<sup>16</sup> *Supra.* at 1164.

<sup>17</sup> *Supra.* at 997.

14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by September 11, 2007.

The National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with this Supplemental Decision for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at [www.nlrb.gov](http://www.nlrb.gov). On the home page of the web site, select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

/s/ Rosemary Pye

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Rosemary Pye, Regional Director  
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Dated at Boston, Massachusetts,  
this 28<sup>th</sup> day of August, 2007